



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

OCT 26 2010

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

7009 1680 0002 2886 2944

Mr. Henri deLaunay
EH & S Coordinator
Hilcorp Energy Company
P.O. Box 61229
Houston, Texas 77208-1220

Re: Draft Consent Agreement and Final Order
Docket No. CWA-06-2011-4810
East Bay Batiste - Inspection No: FYINSP-100062
SPCC Violations during a 2/2/2010 Inspection

Dear Mr. deLaunay:

On 2/2/2010, the subject facility was inspected by the Environmental Protection Agency (EPA). During the inspection, violations of the Spill Prevention, Control and Countermeasures (SPCC) regulations were found. The specific allegations are identified in the enclosed draft Consent Agreement and Final Order (CAFO). EPA has authority under Section 311 of the Clean Water Act to pursue civil penalties for violations of the SPCC regulations. EPA encourages the settlement of easily verifiable violations of SPCC requirements, such as the violations cited in the CAFO. The enclosed CAFO has been issued in accordance with 40 CFR Part 22, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (available upon request).

If Hilcorp Energy Company wishes to settle this matter without further legal action, the enclosed CAFO should be returned, signed by an authorized official of the company within thirty (30) days of receipt of this letter. Final issuance of the CAFO may be subject to additional verification that all necessary corrective actions have been completed. The CAFO, once finalized, is binding on both you and EPA. Upon conclusion of the final action, EPA will take no further action against you for the violations cited in the CAFO.

9679567



The original, signed, CAFO must be sent via CERTIFIED MAIL to:

OPA Enforcement Coordinator
U. S. Environmental Protection Agency
Region 6 (6SF-PC)
1445 Ross Avenue
Dallas, Texas 75202-2733

Upon receipt and processing of the signed document, EPA will forward to you copies of the fully executed CAFO. Penalty payment is not due until thirty (30) days after EPA has returned the fully executed CAFO to you.

By terms of the CAFO, and upon payment of the penalty, you waive your opportunity for a hearing pursuant to Section 311 of the Clean Water Act. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA.

If you elect not to sign and return the CAFO within 30 days of your receipt of this letter and pay the penalty, unless an extension has been granted by EPA, the CAFO will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violations. EPA can pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$11,000 per violation up to a maximum penalty of \$32,500.

Hilcorp Energy Company may request an informal conference to discuss the facts of this case. In the event that a settlement cannot be reached, EPA may elect to file an Administrative Complaint and Opportunity to Request Hearing and Conference (Complaint) in accordance with 40 C.F.R. Part 22. If a Complaint is filed, Hilcorp Energy Company, will have the right to request a hearing to contest the factual allegations set forth in the Complaint.

If you have any questions, or if you wish to schedule an informal settlement conference, please contact Nelson Smith at (214) 665-8489.

Sincerely,



for

Robert R. Broyles
Associate Director
Prevention and Response Branch
Superfund Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

**Hilcorp Energy Company
East Bay Batiste Facility
Plaquemines Parish, LA**

Respondent.

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 CFR § 22.13(b)**

Docket No. CWA-06-2011-4810

LEGAL AUTHORITY

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 6, who has in turn delegated them to the Director of the Superfund Division of EPA, Region 6, who has, by his concurrence, re-delegated the authority to act as Complainant to the Associate Director Prevention and Response Branch in Region 6, Delegation No. R6-2-51, dated February 13, 2008 ("Complainant").

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

Docket No. CWA-06-2010-4810

2. Section 311(j)(1)(C) of the Act, 33 USC § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil from onshore vessels and from onshore facilities and offshore facilities, and to contain such discharges"

3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

4. Through Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to DOI, responsibility for spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Subsequently, pursuant to section 2(i) of E.O. 12777, the Secretary of the Interior redelegated, and the Administrator of EPA agreed to assume (MOU published as Appendix B to 40 CFR Part 112), responsibility for non-transportation-related offshore facilities located landward of the coast line.

5. EPA promulgated the Spill Prevention Control & Countermeasure (SPCC) regulations pursuant to delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 USC § 1251 *et seq.*, which established certain procedures, methods and other requirements upon each owner and operator of a non-transportation-related onshore or off-shore facility, if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as

EPA has determined in 40 CFR § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").

6. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 USC § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. Respondent is a Corporation conducting business in the State of Louisiana, with a place of business located at 1201 Louisiana Street, Suite 1400, Houston, Texas 77002, and is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

8. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 USC § 1321(a)(6), and 40 CFR § 112.2 of an offshore oil production facility, the East Bay Bastiste Facility, located in, Plaquemines Parish, Louisiana ("the facility"). The approximate coordinates of the facility are 29.45647° N and -89.84326° W. Drainage from the facility travels directly into and upon East Bay Batiste; thence to the Gulf of Mexico.

9. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons. Facility capacity is approximately 126,000 gallons.

10. East Bay Batiste and the Gulf of Mexico are navigable waters of the United States within the meaning of 40 CFR § 112.2.

11. Respondent is engaged in drilling, producing, gathering, storing, processing, refining,

transferring, distributing, using or consuming oil or oil products located at the facility.

12. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

13. The facility is an offshore facility within the meaning of Section 311(a)(10) of the Act, 33 USC § 1321(a)(11), 40 CFR § 112.2, and 40 CFR § 112 Appendix B.

14. The facility is therefore a non-transportation-related offshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").

15. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 CFR § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

16. The facility began operating before August 16, 2002.

Allegations

17. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and implement that plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

18. On 02/02/2010, EPA inspected the facility and found that Respondent had failed to ~~fully implement its SPCC plan for the facility. Respondent failed to fully implement such an~~ SPCC plan for the facility as follows:

- a. Inspections not in accordance with 112.7(e)
- b. Training not in accordance with 112.7(f)
- c. No sump system in conformance with 112.11(c)
- d. Corrosion and deterioration of tank foundation (barge) and curbing constitute failure to provide appropriate containment in accordance with 112.7 (c)
- e. Inadequate inspection of pollution prevention equipment and systems as required at 112.11(i)

Curbing and containment is grossly inadequate. Entire tank foundation (barge) is corroded to point of possible collapse.

19. Respondent's failure to fully implement its SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent an oil spill.

Waiver of Rights

20. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the other specific violations alleged above. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

21. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$20,500.00**.

Payment Terms

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

21. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$20,500.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). The Respondent shall submit this Consent Agreement and Final Order, with original signature, along with documentation of the penalty payment to:

OPA Enforcement Coordinator
U. S. Environmental Protection Agency
Region 6 (6SF-PC)
1445 Ross Avenue
Dallas, Texas 75202-2733

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number CWA-06-2010-4810. If you use the U.S. Postal Service, address the payment to:

U.S. Environmental Protection Agency, Fines & Penalties
P.O. Box 979077, St. Louis, MO 63197-9000

- If you use a private delivery service, address the payment to:

U.S. Bank
1005 Convention Plaza, Mail Station SL-MO-C2GL
St. Louis, MO 63101

- The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following person:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

22. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 USC §1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

23. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

24. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

Hilcorp Energy Company

Date: _____

Henri deLaunay
EH&S Coordinator

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Robert R. Broyles
Associate Director
Prevention & Response Branch
Superfund Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 USC §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 CFR Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: _____

Samuel Coleman, P.E.
Director
Superfund Division

**CONCURRENCE ROUTING
OPA ENFORCEMENT**

TYPE OF ACTION:

**Clean Water Act, Class I
Draft Consent Agreement and Final Order
Hilcorp Energy Company
East Bay Batiste- FYINSP - 100062
Plaquemines Parish, LA
Docket No. CWA-06-2011-4810**

(6SF-PC) Nelson Smith

NS 10/22/10

(6SF-P) ^{for} Robert R. Broyles

JP 10/25

(6SF-PC) Frankie Markham

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hilcorp Energy Company
1201 Louisiana St., Suite 1400
Houston, TX 77002-1220

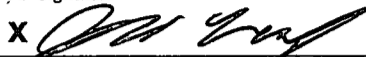
7009 1680 0002 2886 2944

2. Article Number:

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Joshua Moyers

C. Date of Delivery

10-28-10

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

11-4810

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7009 1680 0002 2886 2944

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

◦ Sender: Please print your name, address, and ZIP+4 in this box ◦

MR. NELSON SMITH
U.S. EPA (6SF-PC)
1445 ROSS AVENUE
DALLAS, TX 75202



7009 1680 0002 2886 2944

U.S. Postal Service TM
CERTIFIED MAIL TM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Postmark
Here

Hilcorp Energy Company
1201 Louisiana St., Suite 1400
Houston, TX 77002-1220

7009 1680 0002 2886 2944